

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 Mohamed Abdalla Mahmoud,

5 Petitioner

6 v.

7 Brian Williams,

8 Respondent

Case No.: 2:23-cv-01123-CDS-DJA

**Order Instructing Mahmoud to File
\$ 1983 Complaint or \$ 2254 Habeas
Corpus Petition**

9
10 Petitioner Mohamed Adballa Mahmoud, who is in the custody of the Nevada
11 Department of Corrections (NDOC), submitted a petition for writ of habeas corpus pursuant to
12 28 U.S.C. § 2254. ECF No. 1-1. Because Mahmoud did not properly commence this action by
13 either paying the standard filing fee or filing an application for leave to proceed *in forma pauperis*
14 (IFP), I gave Mahmoud an additional 45 days to pay the filing fee or file an IFP application. ECF
15 No. 3. I granted Mahmoud's request for an extension of time to pay the filing fee or complete an
16 IFP application, and Mahmoud paid the filing fee on October 17, 2023. ECF Nos. 5, 6.

17 Although Mahmoud filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §
18 2254 and refers to an ongoing state habeas corpus petition, the relief he seeks, and his
19 allegations, appear to be in the nature of civil rights claims. Mahmoud cannot pursue both types
20 of claims in the same case. *See Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016) (reiterating that
21 "habeas is the exclusive vehicle for claims brought by state prisoners that fall within the core of
22 habeas, and such claims may not be brought in a § 1983 action"); *Wilkinson v. Dotson*, 544 U.S. 74,
23 81-82 (2005) (holding that "a state prisoner's § 1983 action is barred (absent prior invalidation—
24 no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's
25 suit (state conduct leading to conviction or internal prison proceedings)—if success in that
26 action would necessarily demonstrate the invalidity of confinement or duration"). Mahmoud

1 may pursue either a § 1983 complaint or habeas petition in this case but not both. He may file the
2 other action in a separate case.

3 If Mahmoud is attempting to initiate a civil rights lawsuit or petition for writ of habeas
4 corpus, he must submit the appropriate forms. The Clerk of the Court will send Mahmoud
5 courtesy copies of these forms to help him decide what type of lawsuit he is attempting to raise
6 in federal court.

7 On or before **December 29, 2023**, Mahmoud must: (1) submit a § 1983 civil rights
8 complaint on the appropriate form if he wishes to pursue a civil rights action; or (2) submit a
9 petition for writ of habeas corpus on the appropriate form if he wishes to pursue a habeas
10 corpus action. I further note that if Mahmoud intends to pursue a § 1983 civil rights action, he
11 must pay the full \$402 filing fee for a civil rights action or file a fully complete application to
12 proceed *in forma pauperis*.

13 If Mahmoud does not timely comply with this order, this case will be subject to
14 dismissal without prejudice. If dismissed without prejudice, Mahmoud may refile the case,
15 under a new case number.

16 I THEREFORE ORDER that on or before **December 29, 2023**, Mahmoud must: (1)
17 submit a § 1983 civil rights complaint on the appropriate form if he wishes to pursue a civil
18 rights action; or (2) submit a petition for writ of habeas corpus on the appropriate form if he
19 wishes to pursue an habeas corpus action.

20 I FURTHER ORDER that if Mahmoud is seeking to initiate a civil rights lawsuit, he
21 shall (1) file a fully complete application to proceed *in forma pauperis*; or (2) pay the full \$402
22 filing fee for a civil rights action.

23 I FURTHER ORDER the Clerk of the Court to send to Mahmoud the approved form and
24 instructions for filing a 42 U.S.C. § 1983 complaint and petition for writ of habeas corpus
25 pursuant to 28 U.S.C. § 2254.
26

1 I FURTHER ORDER the Clerk of the Court to send to Mahmoud a blank form IFP
2 application for incarcerated litigants along with instructions, and a copy of this order.

3 I FURTHER ORDER that Mahmoud's failure to comply with this order will result in the
4 dismissal of this action without prejudice and without further advance notice.

5 DATED: November 16, 2023

6
7 
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
UNITED STATES DISTRICT JUDGE